IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.E.A. No.161 of 2006 (O&M)
Date of Decision:08.02.2007

Sh. M.S.Malik

.....Petitioner

Vs.

Commissioner of Central Excise, Rohtak and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Akshay Bhan, Advocate for the appellant.

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Rajesh Bindal, J.

The assessee has approached this Court by filing present appeal raising the following substantial questions of law arising out of order passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short, `the Tribunal') in Appeal No.E2679/01-NB dated 19.10.2005:-

"a. Whether the Ld. Tribunal did not commit an error of law as no penalty was imposable on the Appellants in the facts and circumstances of the present case?

b. Whether the Ld. Tribunal did not commit an error of law in confirming the penalty on the Appellants even when there was no evidence either by way of any documents or statements which prove that the Appellants were involved in the alleged clandestine activities?

c. Whether the Ld. Tribunal did not commit an error of law as for imposition of penalty under Rule 209A, the sine quo non has not been established in as much as there was no evidence to the effect that the Appellants had acquired possession of or otherwise dealt with in any manner with the knowledge or belief that the goods were liable to confiscation?

d. Whether the Ld. Tribunal did not commit an error of law in confirming the penalty under rule 209A of the Rules

even in absence of evidence of existence of guilty knowledge on the part of the Appellant?

The issue in the present case pertains to levy of penalty under Rule 209A of the Central Excise Rules, 1944, which has been levied on the appellant on account of his involvement in removal of exciseable goods in clandestine manner. From the findings recorded by the authorities on record, we find that in his statement dated 29.8.1997, recorded under Section 14 of the Central Excise Act, 1944 (for short, `the Act'), the appellant had categorically admitted the discrepancies found in the stock of finished goods and the raw material. He further deposed that the said shortage in raw material and excess of finished goods/ raw material was found due to the use of duplicate invoices for removal of finished goods/ raw material. On account of discrepancies having been found, excise duty was voluntarily debited vide RG Part II. In this view of the admitted position, the adjudicating authority levied a penalty of Rs.5 lac on the appellant. The Tribunal taking a compassionate view reduced the same to Rs.one lac.

After hearing learned counsel for the appellant and considering the admissions made by him in the statement recorded under Section 14 of the Act, we do not find any reason to differ with the view taken by the Tribunal, and the same cannot be held to be perverse.

Accordingly, the appeal is dismissed.

(RAJESH BINDAL)
JUDGE

February 08, 2007 **(M.M.KUMAR)**
renu **JUDGE**